



September 24, 2021

Ms. Linda Neilson  
Director, Defense Acquisition Regulations System  
Department of Defense  
3060 Defense Pentagon, Room 3B938  
Washington, D.C. 20301-3060

**RE: Input regarding Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors**

Ms. Neilson:

The National Defense Industrial Association (NDIA) represents more than 1,600 corporate members and over 80,000 individual members from small, medium, and large contractors. Our members and their employees feel the impact of any policy change made in how the United States maintains its dominance in all domains of warfare. Our comments come from this diverse membership and represent a broad range of perspectives across the defense industrial base.

Throughout the pandemic, NDIA's member companies have continued to protect our nation while dealing with the day-to-day challenges that the pandemic has caused. Every year, NDIA fields a corporate member survey as part of our annual Vital Signs series that seeks to measure the health and readiness of the defense industrial base. The preliminary results of this year's survey show that the defense industrial base is still recovering from the impact of the pandemic. When asked "*In your opinion, how much time do you think will pass before this business returns to its normal level of operations?*" 14% of respondents indicated that they "*do not believe this business will return to its normal level of operations relative to one year ago*" up from 12% in 2020.

We have provided the following questions and comments regarding Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors.

**1. Definitions of key terms:** Please define key terms that are provided in the Executive Order.

- Please better define "fully vaccinated."
- What are the definitions for "workplace locations?"
- Does "workplace locations" include remote workers?

**2. Scope:** Many of our member companies perform work on both commercial and government contracts.

- Will the new requirements apply to contractor employees that do not participate in a government contract?
- Will all overhead employees be required to comply with the new requirements?

- Please clarify the expectations of prime contractors when a prime's contracts are modified but the contracts for their subcontractors are not modified.
- What are the due diligence requirements of a prime with respect to a subcontractor's representation of compliance?

**3. Accommodations and waivers:** A transparent and consistent process must be applied for waivers and accommodations.

- What types and categories of accommodations will be approved and what types of requests will be denied?
- If a person expresses that they are not "fully vaccinated" and have received medical advice to not get vaccinated will accommodations be made?
- Would a doctor's note be sufficient to receive a waiver or accommodation?
- How will "religious exemptions" be treated?
- How will the Government protect a company's vaccination compliance information?
- Will additional training be provided, and additional management controls implemented, to ensure the consistent application of the forthcoming requirements to minimize individual discretion by contracting officers?

**4. Treatment of costs:** The allowability of costs associated with contractor compliance is unclear.

- Will costs to comply with vaccination requirements be allowable costs (e.g., costs for paid time off to get vaccinated, costs for privacy measures taken by a contractor to protect employees vaccination status, costs related to employee vaccination communication campaigns etc.)?
- Will costs related to testing requirements be charged directly to contracts as allowable costs or treated as overhead costs?

**5. Loss of employees and key personnel by contractors:** There is a strong possibility that some contractor employees, to include key personnel identified in contracts, will not comply with the forthcoming requirements, and decide to leave employment within the defense industrial base. Many of the jobs in the defense industrial base are highly specialized, require years of investment, and often require a security clearance. A loss of one or two employees by smaller contractors may significantly impede their ability to fully perform a contract and may provide a barrier to entry for new entrants.

- How will a contractor's failure to perform because of the workforce challenges created by vaccination requirements be treated by the Government, as a "Force Majeure," "impossibility of performance," or something else?
- Will there be a process to expedite equitable adjustments because of increased costs or changes in the period of performance related to the vaccine requirement?
- How will changes in key personnel within contracts be expedited?
- How will the inability to perform due to a lack of compliance be treated in past performance determinations for future competitions?

**6. Verification of vaccination status:** Since the COVID-19 vaccine became available, many companies have used the honor system and informal polling to determine the vaccination status of their employees.

- What is the role of the prime contractor in the verification of sub-contractor compliance at multiple tiers of their supply chain?
- Will employees have to present their vaccination cards, that were issued at the time of vaccination, or will other vaccine verification services or methods be allowed?
- What happens if an employee lost their vaccination card or does not otherwise have ready proof of their vaccination status (i.e., a photo)?

**7. Forthcoming FAR rule:** NDIA intends to submit a formal comment on the forthcoming FAR rule. We encourage the Government to provide a full 60-day comment period which will allow us enough time to pulse our membership and provide thoughtful comments.

Thank you for your continued efforts to solicit industry feedback on this issue. If you or your staff have any questions please contact Nick Jones, Director of Regulatory Policy, at [njones@ndia.org](mailto:njones@ndia.org) or Wes Hallman, Senior Vice President for Strategy & Policy at [whallman@ndia.org](mailto:whallman@ndia.org).

Respectfully submitted,

National Defense Industrial Association